



## DEPARTMENT OF LABOR

### 2 CFR Part 2900

#### RIN 1205-AC03

### Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

**AGENCY:** Department of Labor.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Department of Labor (DOL or Department) is making technical amendments to regulations most recently finalized on December 30, 2015. This document updates cross-references and terminology used in the Department’s regulations to conform to changes made to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) on August 13, 2020. All regulatory language included here is consistent with either the policies in the Uniform Guidance or the Department’s existing policies and practices.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Laura P. Watson, Administrator, Office of Grants Management, Employment and Training Administration, United States Department of Labor, 200 Constitution Ave N.W., Rm N4716, Washington, DC 20210; telephone 202-693-3333.

**SUPPLEMENTARY INFORMATION:** Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes Federal agencies to dispense with notice and comment procedures for rules when an agency, for “good cause,” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Section 553(d)(3) of the APA requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by an agency for good cause found and published with the rule.

Because this action only makes technical amendments to codified regulations in order to conform cross-references and terminology with a final rule issued by another Federal agency (Office of Management and Budget), DOL finds that notice and public comment under 5 U.S.C. 553(b) is unnecessary. For the same reason, DOL finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective in less than 30 days.

## **Background**

On August 13, 2020, the OMB published amendments to the Uniform Guidance (2 CFR 200.0 *et seq.*) in the *Federal Register* (85 FR 49506). These revisions became effective November 12, 2020, except for the amendments to 2 CFR §§ 200.216 and 200.340, which became effective August 13, 2020. These changes to the Uniform Guidance necessitate changes to cross-references in the Department's corresponding regulations found at 2 CFR 2900 *et seq.*

## **Technical Amendments**

The Department is not making any new policy with the technical amendments in this final rule; all regulatory language included here is consistent with either the policies in the updated Uniform Guidance or the Department's existing policies and practices as codified in 2 CFR parts 200 and 2900, respectively.

This rule revises cross-references made in 2 CFR part 2900 to corresponding sections in 2 CFR part 200. These changes are not substantive. They are intended to align the Department's regulations with the updated Uniform Guidance. This final rule incorporates minor changes to 2 CFR part 2900 to align citations and cross-references in §§ 2900.1, 2900.2, 2900.3, 2900.5, 2900.6, 2900.8, 2900.9, 2900.10, 2900.11, 2900.14, 2900.15, 2900.16, and 2900.18. Paragraph (d) was also added to § 2900.3 to align the Department's definition of "questioned cost" with that found in the updated Uniform Guidance at § 200.1.

In addition to the above changes, this final rule makes certain minor changes to align the language and terminology of the Department's regulations with that of the updated Uniform Guidance, such as replacing the proprietary term "Creative Commons Attribution license" with

the industry-recognized standard “open license” terminology and associated language in § 2900.13, as well as minor technical corrections and additions to improve the clarity of §§ 2900.1, 2900.4, 2900.5, 2900.6, 2900.7, 2900.12, 2900.15, and 2900.16. These include grammatical changes and corrections to punctuation.

Accordingly, the regulations in 2 CFR part 2900 are amended to include the updated information.

## **Regulatory Analyses**

### **Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)**

The Department developed this final rule in accordance with the principles of Executive Orders (E.O.s) 12866 and 13563. E.O. 12866, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 supplements and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866.

The Office of Information and Regulatory Affairs at the Office of Management and Budget has determined that this final rule is a non-significant regulatory action under E.O. 12866. Additionally, no analysis is required under the Regulatory Flexibility Act<sup>1</sup> or Secs. 202 and 205 of the Unfunded Mandates Reform Act of 1999,<sup>2</sup> because, for the reasons discussed above, the Department is not required to engage in notice and comment under the APA.

### **E.O. 13132, Federalism**

This final rule does not have federalism implications warranting the application of E.O. 13132. This final rule does not have substantial economic or policy-related direct effects on the

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<sup>1</sup> See 5 U.S.C. 601(2) (limiting “rules” under the Regulatory Flexibility Act, to rules for which a general notice of proposed rulemaking is published).

<sup>2</sup> Pub. L. 104-4.

States, on the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

### **Paperwork Reduction Act of 1995**

This action does not contain a new collection of information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This action would not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations, and does not contain a collection of information as defined by 44 U.S.C. 3502(3).

### **List of Subjects in 2 CFR Part 2900**

Accounting, Administrative practice and procedure, Appeal procedures, Auditing, Audit requirements, Cost principles, Grant programs, Grant programs—labor, Grants administration, Labor, Reporting and recordkeeping requirements.

Under the authority of 5 U.S.C. 301, the Department of Labor amends 2 CFR part 2900 as follows:

### **PART 2900—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

1. The authority citation for part 2900 continues to read as follows:

**Authority:** 5 U.S.C. 301; 2 CFR 200.

2. Amend § 2900.1 by revising the second sentence to read as follows:

#### **§ 2900.1 Budget.**

\* \* \* See § 200.407 and § 2900.16 for more information about prior written approval (prior approval) (see 2 CFR 200.1).

3. Revise § 2900.2 to read as follows:

#### **§ 2900.2 Non-Federal entity.**

In the DOL, Non-Federal entity means a state, local government, Indian tribe, institution of higher education (IHE), for-profit entity, foreign public entity, foreign organization or

nonprofit organization that carries out a Federal award as a recipient or subrecipient (see 2 CFR 200.1).

4. Amend § 2900.3 by revising the introductory text and by adding paragraph (d) to read as follows:

**§ 2900.3 Questioned cost.**

In the DOL, in addition to the guidance contained in 2 CFR 200.1, a questioned cost means a cost that is questioned by an auditor, Federal Project Officer, Grant Officer, or other authorized Awarding agency representative because of an audit or monitoring finding:

\* \* \* \* \*

(d) Questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A-123 Appendix C (see also the definition of improper payment in 2 CFR 200.1).

5. Revise § 2900.4 to read as follows:

**§ 2900.4 Adoption of 2 CFR part 200.**

Under the authority listed above, the Department of Labor adopts the Office of Management and Budget (OMB) Guidance in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR part 200), as supplemented by this part, as Department of Labor policies and procedures for financial assistance administration. This part gives regulatory effect to the OMB guidance as supplemented by this part. The DOL also has programmatic and administrative regulations located in titles 20 and 29 of the CFR.

6. Revise § 2900.5 to read as follows:

**§ 2900.5 Federal awarding agency review of risk posed by applicants.**

In addition to the guidance set forth in 2 CFR 200.206(b), in evaluating risks of applicants, DOL also considers audits and monitoring reports containing findings and issues of noncompliance or questioned costs, in addition to reports and findings from audits performed

under Subpart F—Audit Requirements of 2 CFR 200 or the reports and findings of any other available audits (see 2 CFR 200.206(b)).

7. Revise § 2900.6 to read as follows:

**§ 2900.6 Advance payment.**

In the DOL, except as authorized under 2 CFR 200.208, the non-Federal entity must be paid in advance (see 2 CFR 200.305(b)(1)).

8. Amend § 2900.7 by revising the section heading to read as follows:

**§ 2900.7 Federal payment.**

\* \* \* \* \*

9. Revise § 2900.9 to read as follows:

**§ 2900.9 Revision of budget and program plans.**

In the DOL, approval of the budget as awarded does not constitute prior approval of those items requiring prior approval, including those items the Federal awarding agency specifies as requiring prior approval (see 2 CFR 200.407 and 2 CFR 200.308(a)).

10. Revise § 2900.10 to read as follows:

**§ 2900.10 Prior approval requests.**

In addition to the guidance set forth in 2 CFR 200.308(c), for Federal awards from the Department of Labor, the non-Federal entity must request prior approval actions at least 30 days prior to the effective date of the requested action (see 2 CFR 200.407).

11. Revise § 2900.11 to read as follows:

**§ 2900.11 Revision of budget and program plans including extension of the period of performance.**

In addition to the guidance set forth in 2 CFR 200.308(b), for Federal awards from the Department of Labor, the non-Federal entity must request prior approval for an extension to the period of performance.

12. Revise § 2900.12 to read as follows:

## **§ 2900.12 Revision of budget and program plans approval from Grant Officers.**

In the DOL, unless otherwise noted in the grant agreement or cooperative agreement, prior written approval for revision of budget and program plans must come from the Grant Officer (see 2 CFR 200.308(d)).

13. Revise § 2900.13 to read as follows:

## **§ 2900.13 Intangible property.**

In addition to the guidance set forth in 2 CFR 200.315(d), the Department of Labor requires intellectual property developed under a discretionary Federal award process to be in a format readily accessible and available for open licensing to the public. An open license allows subsequent users to copy, distribute, transmit and adapt the copyrighted work and requires such users to attribute the work in the manner specified by the recipient.

14. Amend § 2900.14 by revising the first sentence to read as follows:

## **§ 2900.14 Financial reporting.**

In addition to the guidance set forth in 2 CFR 200.328, for Federal awards from the Department of Labor, the DOL awarding agency will prescribe whether the report will be on a cash or an accrual basis. \* \* \*

15. Revise § 2900.15 to read as follows:

## **§ 2900.15 Closeout.**

In addition to the guidance set forth in 2 CFR 200.344(b), for Federal awards from the Department of Labor, the non-Federal entity must liquidate all financial obligations and/or accrued expenditures incurred under the Federal award. For non-Federal entities reporting on an accrual basis and operating on an expenditure period, unless otherwise noted in the grant agreement or cooperative agreement, the only liquidation that can occur during closeout is the liquidation of accrued expenditures (NOT financial obligations) for goods and/or services received during the grant period.

16. Amend § 2900.16 by revising the second sentence to read as follows:

**§ 2900.16 Prior written approval (prior approval).**

\* \* \* Unless otherwise noted in the grant agreement or cooperative agreement, the Grant Officer is the only official with the authority to provide prior written approval (prior approval). \* \* \*

17. Revise § 2900.18 to read as follows:

**§ 2900.18 Contingency provisions.**

In addition to the guidance set forth in 2 CFR 200.433(c), for Federal awards from the Department of Labor, excepted citations include 2 CFR 200.334 Retention requirements for records, and 2 CFR 200.335 Requests for transfers of records.

SIGNED:

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Martin J. Walsh,

Secretary of Labor.

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